IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 819 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHAILESHKUMAR BABULAL DHARIYA - Appellant(s)
Versus
UNION OF INDIA & 1 - Defendant(s)

==========

Appearance :
MS ANUSRI KAPADIA FOR MS MEGHA JANI for Appellant,
MR DC SEJPAL for Respondent No.1,
Respondent No.2 is deleted.

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Present appeal, under sec.173 of the Motor Vehicles Act,

1988, is at the instance of the appellant – original claimant challenging judgement and award dtd.26/6/2001 passed by the Motor Accident Claims Tribunal (Auxiliary), Court No.3 at Ahmedabad in Motor Accident Claim Petition No.185 of 1990, in not awarding full claim of Rs.16,37,000=00 as prayed for by the claimant and awarding compensation of Rs.4,06,880=00 only.

2. The facts leading to the present appeal in nutshell are as under:-

3. That the appellant – original claimant sustained injuries in the vehicular accident which took place on 30/3/1990 with the truck bearing No.88D-76592. That the claimant who was resident of Mumbai, came to Ahmedabad from Mumbai on 28/3/1990 and went to railway station on 30/3/1990 for confirming his railway ticket. When he was about to cross the road, one truck bearing No.88D-76592 came in excessive speed, knocked the claimant, as a result of the said accident, he sustained multiple injuries and he was immediately taken to V.S. Hospital, Ahmedabad for treatment where he was admitted as an indoor patient and urgent operation was performed on

him on the same day at 11.00 p.m. The claimant sustained serious injuries in urinary track and as the urinary track was badly affected, catherisation was performed on him. That he was discharged from the hospital on 23/6/1990. That there was fracture on the right leg of shaft bone as well as fracture of pubic bone. That he was treated by urologist as well as orthopedic surgeons. He was required to undergo dilatation every week. That he had to take physiotherapy treatment for a long period. He sustained permanent urotherical disability of 20% which requires periodical instrumental for control and permanent querial disability resulting into disability to perform intercourse of 20%. The claimant sustained 64% disability of the lower limbs which would come to 32% body as a whole. The claimant was also constrained to incur huge medical expenses for operation as well as for dilatation procedure etc., and as he was not in a position to work and after sustaining serious injuries, he was not in a position to stand up in right position for a long period and he could not work fast and could not squat on the floor after sustaining injuries and even the routine works got hampered by the injuries sustained by him in the vehicular accident and submitting

that at the relevant time, he was earning Rs.4500=00 per month, the claimant preferred Motor Accident Claim Petition No.185 of 1990 before the learned Motor Accident claims Tribunal, Ahmedabad claiming compensation of Rs.16,37,000 on various heads. The claimant claimed Rs.16,37,000 on the following heads:-

Rs.01,00,000=00	Towards medical expenditures, actually incurred.
Rs.00,55,000=00	Towards miscellaneous expenses for the period between 30/3/1990 to 23/6/1990 while the claimant was in V.S. Hospital, Ahmedabad.
Rs.01,55,000=00	Towards Medical expenditures for the period after 24/6/1990 – dilatation, miscellaneous expenses, doctors etc.
Rs.00,27,000=00	Towards loss of past income for from the date of accident at the rate of Rs.4500=00 per month.
Rs.00,50,000=00	Towards pain, shock and sufferings.
Rs.12,50,000=00	Towards future loss of income due to permanent disability, loss of amenities etc.
==========	
Rs.16,37,000-00	Total
==========	

4. The claim petition was opposed by the opponent Nos.1 and 2 and written statement was filed at Ex.42 denying the averments made in the claim petition. It was denied that the claimant, on the date of accident, was working as Commission Agent and was earning Rs.4500=00 per

month as commission. It was also submitted that the opponent No.2 was driving the vehicle at moderate speed and had taken all precautions in driving his vehicle. It was also submitted that the claimant had not suffered injuries because of the rash and negligent driving by the driver of the offending truck. It was submitted that the claimant was, at the relevant point of time, crossing the road in careless and negligent manner and therefore, he met with the accident and sustained serious injuries. It was also the case on behalf of the opponents that the driver of the truck was proceeding on the correct side of the road and at moderate speed, but because of the carelessness on the part of the claimant, he met with the accident and suffered the injuries and therefore, the claimant be fastened with the liability of contributory negligence. It was also submitted that the claim as preferred by the claimant is on higher-side and exaggerated.

5. On the basis of the pleadings of the rival parties, the tribunal framed the issues at Ex.36. The claimant himself was examined at Ex.37 and the driver of the truck was examined at Ex.67. Considering the oral depositions of

the claimant as well as driver of the truck and considering the documentary evidence i.e. Panchnama of the scene of accident Ex.22, the tribunal held the driver of the truck – opponent No.2 contributory negligent to the extent of 80% and that of the claimant to the extent of 20%.

6. To prove the permanent partial disability and the injuries sustained by the claimant, the claimant examined Dr.Hemang Bakshi vide Ex.45 and Dr.Shah vide Ex.52 and the injury certificate was produced at Ex.40. Considering the deposition of the Doctors as well as other disability certificates produced vide Ex.Nos.53 and 48, learned tribunal considered the permanent partial disability to the extent of 50% for the purpose of assessing the future loss of income suffered by the claimant. After hearing the learned advocates appearing on behalf of the rival parties, learned tribunal awarded in all Rs.5,08,600=00 on different heads by way of compensation and deducting 20% towards contributory negligence of the claimant, actually awarded Rs.4,06,880=00 with 9% interest. The tribunal awarded the aforesaid amount on following heads:-

Rs.1,09,600=00	Towards actual medical expenditure

Rs.0,75,000=00	Towards future medical treatment and expenses for dilatation.
Rs.0,10,000=00	Towards miscellaneous expenses.
Rs.3,60,000=00	Towards future loss of income.
Rs.0,24,000=00	Towards actual loss of income for six months.
Rs.0,30,000=00	Towards pain shock and suffering.
==========	
Rs.6,08,600=00	Total [the Tribunal has wrongly calculated Rs.5,08,600]
==========	

Being aggrieved by and dissatisfied with the impugned judgement and award passed by the learned tribunal in not awarding full compensation of Rs.16,37,000=00 as prayed for by the claimant – appellant herein, and awarding Rs.4,06,880=00, the appellant herein – original claimant has preferred the present First Appeal.

7. Ms.Anusri Kapadia, learned advocate appearing on behalf of Ms.Megha Jani, learned advocate appearing for the appellant – original claimant has vehemently submitted that the judgement and award passed by the learned Tribunal in awarding compensation of Rs.4,06,880=00 only, is absolutely on conservative and lower side. It is submitted that looking to the prolong hospitalization, sufferings, three operations and the fact that the claimant

was required to go for dilatation every week, the tribunal has materially erred in awarding Rs.30,000=00 only towards pain, shock and suffering.

Learned advocate for the appellant has relied upon the decision of the Hon'ble Supreme Court in the case of R.D. Hattangadi Vs. Pest Control (India) (P) Ltd., reported in (1995) 1 SCC 551 and has submitted that the tribunal ought to have awarded at least Rs.1,50,000 towards pain, shock and suffering. It is also submitted by Ms.Kapadia that though it has come on record by way of documentary evidence that the claimant incurred expenditure of Rs.1,23,600=00 towards medical expenditure, hospitalization charges, operation charges etc., still, the tribunal has awarded only Rs.1,09,600=00 under the head of medical expenses and thus, Rs.14,000=00 have been wrongly denied. It is also further submitted by Ms.Kapadia that inspite of the fact that for all time to come in future the claimant is required to go for dilatation twice a month and it costs Rs.500=00 to Rs.1000=00 for each dilatation, still the tribunal has awarded Rs.75,000=00 only towards future treatment and dilatation. It is submitted that the tribunal at least

ought to have awarded Rs.2 Lacs towards future medical treatment and dilatation. It is also further submitted by her that despite documentary evidence at Ex.26 - diary maintained by the claimant with regard to miscellaneous expenditure actually incurred by the claimant and his family members while the claimant was in hospital and taking treatment at Ahmedabad and Mumbai, which comes to Rs.53,000=00 and odd, the tribunal has materially erred in awarding only Rs.10,000=00 only towards miscellaneous expenditure. Therefore, it is submitted that the tribunal ought to have awarded Rs.55,000=00 towards miscellaneous expenditure incurred by the claimant.

8. It is also further submitted by her that when it has come on evidence and it is admitted position that the claimant was required to take bed rest initially for one year and thereafter for six months he could not walk without clutches and thereafter he was in a position to walk with stick, the tribunal ought to have awarded actual loss of income for one and half years, instead of awarding actual loss of income for six months only.

9. Ms.Kapadia, learned advocate has further submitted that the tribunal has committed an error in awarding future loss of income by considering the income of the claimant at Rs.4000 per month only and the tribunal has materially erred in not considering the future rise in income.

10. Ms.Kapadia, has further submitted that the tribunal has materially erred in holding the claimant contributory negligent to the extent of 20%. It is submitted that in fact, the driver of the truck, in rash and negligent manner took turn on the left side and therefore, the rear position of the truck dashed with the claimant who was standing on the side of the road to cross the road. Therefore, the learned tribunal ought to have held the driver of the truck 100% negligent for the accident in question and the learned tribunal has erred in holding the claimant – appellant contributory negligent to the extent of 20%.

11. Submitting accordingly, Ms.Kapadia, learned advocate for the appellant – original claimant has requested to allow the present appeal and to modify the judgement and award passed by the learned tribunal and to enhance the

amount of compensation accordingly.

12.The appeal is opposed by Mr.D.C. Sejpal, learned Central Government Standing Counsel appearing for the respondent No.1. It is submitted by him that the tribunal has rightly held the claimant contributory negligent to the extent of 20%, as due care and caution ought to have taken by the claimant while crossing the road but he was careless and negligent, as a result of which the accident has occurred and the appellant has suffered injuries. It is submitted that as rightly observed by the learned tribunal, the driver of the truck was at moderate speed and therefore, the said finding is not required to be interfered with.

13.Mr.Sejpal, learned Central Government Standing Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of Divisional Controller, KSRTC Vs. Mahadeva Shetty and another, reported in (2003) 7 SCC 197 and has submitted that determination of compensation by the tribunal has to be rational based on a judicious approach and mathematical precision is not possible and compensation must be “just” and it cannot

be a bonanza, not a source of profit but the same should not be a pittance. It is further submitted that as held by the Hon'ble Supreme Court in the said decision, every method or mode adopted for assessing the compensation has to be considered in the back ground of “just” compensation which is pivotal consideration and though by use of the expression “which appears to it to be just” a wide discretion is vested in the tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. It is submitted that in the said decision, the Hon'ble Supreme Court has also considered the decision relied upon by the claimant – appellant herein i.e. R.D. Hattangadi (supra). It is submitted that considering the observations of the Hon'ble Supreme Court in case of Divisional Controller, KSRTC (supra), the judgement and award passed by the tribunal is not required to be interfered with as no error has been committed by the learned tribunal in awarding compensation and the compensation awarded by the tribunal is just and proper in the facts and circumstances of the case. Submitting accordingly he has requested to dismiss the present appeal.

14. Heard the learned advocates appearing for the respective parties.

15. It is not in dispute that the appellant – original claimant sustained injuries in the vehicular accident which took place on 30/3/1990 with the Truck bearing No.88D-76592. The learned tribunal has held the appellant – original claimant contributory negligent for the accident in question to the extent of 20% and held the driver of the truck contributory negligent to the extent of 80%. The learned advocate appearing on behalf of the appellant has vehemently submitted that the learned tribunal has materially erred in holding the appellant – original claimant negligent to the extent of 20% and in the facts and circumstances of the case, the learned tribunal ought to have held the driver of the truck negligent for the accident in question to the extent of 100%.

16. As per the deposition of the claimant, the truck was coming in high speed and abruptly turn was taken by the truck driver for coming towards Station and therefore, rear portion of the truck dashed with the claimant, as a

result of which the claimant sustained serious injuries. Now considering the panchnama of the place of accident, evidence and the depositions of the claimant as well as driver of the truck, it emerges that the claimant was just on the side of the road and was proceeding towards crossing the road and not actually crossing the road. It also emerges from the record that the truck driver abruptly took turn and was parking the truck and therefore, the rear portion of the truck dashed with the claimant, as a result of which he sustained various serious injuries. The tribunal held the claimant contributory negligent to the extent of 20% by holding that the claimant was little bit careless in crossing, as a result of which he met with the accident and sustained injuries. As stated above, the claimant was about to cross the road and was on the side of the road and the accident took place while the truck driver abruptly took turn and was parking the vehicle. In above view of the matter and considering the facts and circumstances of the case and considering the Panchnama of the place of accident, deposition of claimant Ex.37 and deposition of the driver of the truck, we are of the opinion that the driver of the truck was 100% negligent for the accident in question

and the tribunal has materially erred in holding the claimant contributory negligent to the extent of 20% and we hold accordingly.

17. The next question which is required to be considered by this Court is whether the tribunal was justified in awarding compensation of Rs.5,08,600=00 only under various heads against the claim made by the claimant of Rs.16,37,000=00. The tribunal has awarded Rs.30,000=00 towards pain, shock and suffering, Rs.75,000=00 towards future medical treatment and expenses for dilatation, Rs.1,09,600=00 towards actual medical expenditure and Rs.10,000=00 towards towards miscellaneous expenses. Rs.3,60,000=00 towards future loss of income and Rs.24,000=00 towards actual loss of income. [total comes to Rs.6,08,600=00, but the tribunal has awarded Rs.5,08,600] It is not in dispute that the appellant - original claimant sustained multiple serious injuries inclusive of serious injuries in the urinary track and as the urinary track was badly affected, catherisation was performed on him. It is also not in dispute that the claimant was hospitalised for three months initially in V.S. Hospital at Ahmedabad more particularly from 30/3/1990

to 23/6/1990. Thereafter, he returned to his native place – Mumbai and he had to remain under the treatment of urologist and orthopedic surgeons. He was required to undergo dilatation every week. He was required to take physiotherapy for a pretty long period. There was fracture on the right leg of the saft Bone as well as fracture of pubic bone and other injuries as narrated in the Injury Certificate Ex.40. Thrice operations were performed on the claimant. Two operations were performed at VS Hospital, Ahmedabad and one operation was performed at Mumbai. Now, considering the prolonged hospitalisation and the serious injuries sustained by the claimant and more particularly considering the fact that the claimant was required to undergo operations in the hospital of tibia fibula and catherisation and twice a month the claimant was required to undergo dilatation and it cannot be disputed that the process of dilatation is painful and it has also emerged from the record that for all time to come in future the claimant is required to undergo dilatation twice a month, the tribunal has committed an error in awarding Rs.30,000=00 only towards pain shock and suffering. In the facts and circumstances of the case and considering the sufferings,

we are of the opinion that the claimant would be entitled to at least Rs.1,00,000=00 towards pain shock and suffering.

18. The tribunal has awarded Rs.1,09,600=00 towards actual medical expenditure. Considering the record it appears that the claimant has produced total bill for an amount of Rs.1,23,600=00 against which the tribunal has awarded Rs.1,09,000=00 only towards actual medical expenditure. There is no reason not to pay the entire amount of Rs.1,23,600=00 incurred towards medical expenditure. Under the circumstances, the claimant would be entitled to additional amount of Rs.14,000=00 under the head of pain shock and suffering.

19. Now, so far as the miscellaneous expenditure incurred by the claimant and his family members while the claimant was in hospital and while he was taking treatment at Ahmedabad as well as Mumbai is concerned, the claimant has produced on record accounts at Ex.26 showing particulars with regard to each and every expenses. The claimant has produced account for an amount of Rs.53,000=00 and odd, against which the

tribunal has tribunal has awarded Rs.10,000=00 only. When the claimant has produced account written in the book at Ex.26 which is not challenged or disputed by the respondents, there is no reason not to award the said amount to the claimant. Under the circumstances, we are of the opinion that the claimant would be entitled to additional amount of Rs.35,000=00 (in all Rs.45,000=00) towards medical expenditure, extra diets attendance charges etc.

20. As stated above, the tribunal has awarded Rs.75,000=00 only for future medical treatment and future dilatation. It is not in dispute and/or it is not challenged that the applicant was initially required to undergo dilatation twice a month and thereafter in future also he is required to undergo dilatation twice a month and each dilatation costs Rs.500=00 to Rs.1000=00 and so as to avoid any infection after the dilatation, the claimant is required to take medicines for three days. Now, considering the above and when the dilatation is to be performed twice a month in future for all time to come, the tribunal has committed error in warding Rs.75,000=00 only towards future treatment and dilatation. In the facts and

circumstances of the case, we are of the opinion that the claimant would be entitled to at least Rs.1,50,000=00 towards future treatment and dilatation. Thus, the claimant would be entitled to additional amount of Rs.75,000=00 towards future treatment.

21. Now so far as the future actual loss of income is concerned, the claimant has submitted that the tribunal has committed error in awarding compensation of Rs.3,60,000=00 under the head of future loss of income considering the income of the claimant at the rate of Rs.4000=00 per month. However, in the facts and circumstances of the case and considering the evidence on record and considering the fact that the claimant would get the compensation at a time, we are of the opinion that the tribunal has not committed any error in awarding the future economic loss considering the income of the claimant at Rs.4000 per month. The said amount awarded by the tribunal is just and proper in the facts and circumstances of the case.

22. Now, so far as the actual loss of income is concerned, it appears that the tribunal has awarded Rs.24,000

considering the loss of actual loss of income for the period of six months. However, it has come on record and on evidence, which is not challenged, that the claimant was hospitalised from 30/3/1990 to 23/6/1990 and thereafter for a period of one year he was advised to take bed rest and after one year, he was permitted to walk with clutches for six months and thereafter he was able to walk with sticks. Thus, at least for a period of one year and six months the claimant was not in a position to do any work. Under the circumstances, the claimant would be entitled to actual loss of income for 18 months at the rate of Rs.4000=00 per month. However, the tribunal has awarded compensation of Rs.24,000=00 for the actual loss of income for a period of six months only considering the income of the claimant at the rate of Rs.4000=00. Thus, the claimant would to additional amount of Rs.48,000=00 (in all Rs.72,000=00 towards actual loss of income.

Thus, the claimant would be entitled to compensation under the different heads as under:-

Rs.1,23,600=00	Towards actual medical expenses

	(tribunal awarded Rs.1,09,600=00 only).
Rs.1,50,000=00	Towards future treatment, & dilatation (tribunal awarded Rs.75,000=00 only).
Rs.0,45,000=00	Towards misc.expenses, special diets, attendance charges etc. (tribunal awarded Rs.10,000=00) only.
Rs.3,60,000=00	Towards future loss of income.
Rs.0,72,000=00	Towards actual loss of income (tribunal awarded Rs.24,000=00) only.
Rs,1,00,000=00	Towards pain, shock and sufferings (tribunal awarded Rs.30,000=00) only.

Rs.8,50,600=00	Total
==========	

Now, so far as the decision Divisional Controller, KSRTC (supra) relied upon by the learned counsel appearing on behalf of the respondents are concerned, it is required to be noted that even the Hon'ble Supreme Court in the said decision has observed that the tribunal constituted under the Act as provided in Sec.168 is required to make an award determining the amount of compensation which to it appears to be “just” and it has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. It is further observed that bodily injury is nothing but a deprivation which entitles the claimant to damages and the quantum of damages fixed should be in accordance with the

injury and injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. It is also further observed that at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim and the statutory provisions clearly indicate that the compensation must be “just”. Thus, the Hon'ble Supreme Court has relied upon awarding “just” compensation in the said decision. Looking to the facts and circumstances and the injuries sustained by the claimant and permanent partial disability, according to us awarding of Rs.8,50,600=00 would be “just” compensation.

Thus, the appellant herein – original claimant would be entitled to in all Rs.8,50,600=00 (Rupees Eight Lacs Fifty Thousand Six Hundred only) as compensation and as held above, the truck driver is held 100% negligent for the vehicular accident in question and injuries sustained by the claimant. As the tribunal has awarded compensation of Rs.4,06,880=00, the

claimant would be entitled to additional amount of Rs.4,43,720=00 (Rupees Four Lacs Forty Three Thousand Seven Hundred Twenty only) with 9% interest from the date of the claim petition till realisation.

23. The appeal succeeds in part. The judgement and order passed in the tribunal in Motor Accident Claim Petition No.185 of 1990 is hereby modified to the aforesaid extent only. The rest of the judgement and award is not interfered with. In the facts and circumstances of the case, there shall be no order as to costs.

(J.R. VORA, J.)

(M.R. SHAH, J.)

rafik